



What is the intention of the MHA Department behind bringing the recent amendments in FCRA?

Answer:

a) Huge unutilized funds and deviation from the purpose

First and foremost, the main reason for bringing in the Bill was Huge Unutilized Funds in the hands of many organizations which are recipient of such foreign contribution, although the annual inflow of foreign contribution have almost doubled in past 10 years. It is well settled that foreign contribution usually comes with a purpose i.e. for a specific project or program but it has been observed that the same was not being utilized towards the purpose for which they are registered and is still lying unutilized.

b) Non-compliances of the provisions of the Act

Secondly, you all must have witnessed the number of cancellations of FCRA Registration done by the MHA Department over past few years (almost 50%) of the due to non-compliances, mainly on account of non-submission of annual returns and improper maintenance of accounts and records, which is the very basics of compliances required under the Act.

c) Misappropriation and Misutilization of Foreign Funds

Lastly, it was observed that the many NGOs were indulged in outright misappropriation and mis-utilization of foreign contribution funds and might have escaped due to incomplete data on records as most of them also didn't comply with the basic requirements of filing the return.



From which date the amendments will be effective?

Answer:

The amendments have been made effective from 29th September, 2020.



After the amendments have been made effective, what should be the first step to be taken by the FCRA Registered organizations?

Answer:

The organization should immediately stop sub-granting of foreign funds by way of re-transferring it as a donation to other organizations irrespective of the fact whether such organizations are registered under FCRA or not.



Whether the organizations can receive the funds in their existing FCRA Designated Bank Account?

Answer:

In our opinion, since there is no clarification regarding opening of bank account in State Bank of India at the specified branch of New Delhi, the funds can still be received in the existing FC Designated bank account.

However, in order to avoid any litigations or confusions, if the receiving of funds is not that urgent and can be delayed, it's better to avoid till any further notification or circular in this regards by the MHA Department.



When such “FCRA Account” has to be opened in SBI at a specified branch of New Delhi?

Answer:

The clarification on this matter is still awaited and we are of the opinion that the Government will soon come up with the effective date and some detailed process on the same. We hope that a sufficient time period must be granted, say, 3-6 months, for opening such bank account in order to avoid any chaos and smooth transition.



Will the functioning of small organizations working at the grassroot levels be affected by the amendments?

Answer:

Yes, definitely there might be some kind of detrimental impact and challenges for many such organizations but with renewed methodologies and procedures in place, they can either upgrade themselves with regards to international standards and best practices in order to be able to directly receive foreign funds or they can continue to be mere executors and facilitators for running the projects without being themselves the legal holder of the project or their project partner.



How will the larger organizations able to execute the various projects without support of smaller ones, since sub-granting is now prohibited?

Answer:

The larger organizations who were previously acting as mere custodian of foreign funds on behalf of the smaller entities will now have to take the legal ownership and complete accountability of the project.

They can still continue to get the projects executed through smaller organizations under their supervision and ownership by opening utilization bank account and authorizing the management of such other organization to operate the same on its behalf.



In the above case, in whose financials the project shall be reflected?

Answer:

All the internal vouchers and records shall be maintained in the name of such large organization, who is the legal holder of the project and the accounts of such project shall be consolidated with its financial statements.



What are the administrative expenses listed out under the FCRA?

Answer:

The following has been specifically listed out as administrative in nature:

1. Salaries, wages, travel expenses or remuneration realized by the Members of the Executive Committee or Governing Council.
2. All expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel to such personnel
3. All expenses related to consumables like electricity and water charges, telephone charges, postal charges, printing & stationery expenses and expenditure on office equipment.
4. Cost of accounting for and administering funds
5. Expenses towards running and maintenance of vehicle
6. Cost of writing and filing reports
7. Legal and professional charges and
8. Rent of premises, repairs to premises and expenses on other utilities

However, expenses incurred directly in furtherance of the stated objectives of the welfare oriented organization and expenditure incurred towards salaries, wages or remuneration of personnel engaged in training or collection of field data of an association engaged primarily in research and training shall be excluded.



Whether the current reduced limit of administrative expenses from 50% to 20% will any way affect the FCRA organizations?

Answer:

Prima-facie it seems that it will be a challenge for many organizations to smoothly run any project with such reduced cap on spending of administrative expenses. But in our opinion, genuine organizations who are committed towards the project would not have any concern with such cap and it is done to stop many organizations who were deviating from the very purpose for which the foreign funds were received, spending more and more on admin expenses rather than towards execution or program expenses.



Can the organizations utilize the funds in their existing FCRA designated bank account or utilization accounts?

Answer:

Yes, the organizations need not wait for any clarification on the “FCRA Account” to be opened in SBI at New Delhi, for utilizing the funds already lying unutilized in their existing bank accounts. There is no restriction imposed on utilization of funds by these amendments.



Do the office bearers or the key functionaries have to physically visit New Delhi for opening of the FCRA Account?

Answer:

No clarification or notification has been released on this matter but in our opinion, in this new era of technology, the Government will surely come up with a robust infrastructure and networking system, allowing organizations to open online account with SBI in New Delhi and conducting verification of the office bearers following the norms for e-KYC. No physical visit should be required otherwise there will be a huge conundrum.



With the amendment related to inquiry before granting of renewal, what the organizations have to be keep in mind for the upcoming renewal or further renewal of FCRA Registration?

Answer:

The organizations have to ensure that they have complied with all the provisions of the Act such as:

- a) Filing of annual returns and quarterly intimations within time limit specified under the Act
 - b) No mixing of foreign funds and local funds
 - c) No inter-transfer of funds between utilization accounts
 - d) No deviation from the purpose of the grant
 - e) Filing of Intimation for any change in bank account or change of more than 50% in the Governing Board or for any other matter as specified in the Act.
 - f) Applying for renewal within the time limit as prescribed i.e. at least six months before the expiry of the renewal.
 - g) Any other compliance required under the Act.
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Whether such inquiry be conducted physically or online?

Answer:

We are of the opinion that it will be less cumbersome and time-consuming if somewhat similar to income tax faceless assessment is brought in for such type of inquiries.

However, in absence of any clarification on the matter, it seems that a physical inquiry will be conducted at the registered address of the organization by the FCRA appointed inspectors.



Whether any of these amendments affect the management committee of the Organizations registered under FCRA?

Answer:

Yes. Now all on the Governing Board of the organization i.e. office bearers, committee members or other key functionaries by whatever name they may be called, must hold a valid Aadhaar Card, as it has to be now quoted mandatorily at the time of application for registration, prior permission and renewal under FCRA. In our opinion, holding a valid Aadhaar card does not mean just possessing a Aadhaar number but it might also mean with the accurate details which should match any other identification documents and probably also linked with the mobile number.



Does the voluntary surrender clause, a boon to those who are no longer interested in continuing with the registration?

Answer:

Not exactly because it might seem to be a welcome clause but only for those organizations who have not created any assets out of the foreign funds and have been completely compliant with the provisions of the Act.

However, for those who have only been receiving the funds for the project, which have been executed and the funds are completely utilized with no movable or immovable assets created out of it, it is surely a boon = if they are no longer interested in FC Receipts.



Whether any transition period has been provided by Government?

Answer:

Not yet. The FCRA Amendment Act, 2020 has been made effective from 29th September, 2020 without any clause for granting relief on the transition period.

However, we are of the opinion that considering the ongoing pandemic situation all over the world and the panic created among the NGO sector due to the amendments, the Central Government may exercise its power under the Act, and come up with a

notification for granting relief and allowing transition period for implementation of certain amendments laid down in the FCRA Amendment Act, 2020.

It should be noted that till then, it is advisable for all FCRA organizations to comply with the provisions of the amended Act.



What will happen if you transfer or sub-grant the funds after 29th September, 2020?

Answer:

It will be considered a violation under the FCRA Amendment Act, 2020 and appropriate actions might be taken against the organization for wilful violation.



What if any organization has already spent more than 50% towards administrative expenses before 29th September, 2020?

Answer:

The amended Act has come into force with effect from 29th September and the reduced limit of 20% for administrative expenses is applicable henceforth and not retrospectively for the entire year. So, in our opinion, it cannot be considered as violation of the law.



What should an organization do to meet the administrative expenses within the limit enforced as per the amended Act?

Answer:

The organizations have to now allocate more of local funding for managing the administrative expenses rather depending on foreign funds and try to keep such expenses as low as possible.

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